80-1081

No.

Supreme Court, U. S.
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MICHAEL RODAK, JR., CL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

TALLEY R. HOLMES, JR.,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

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QUESTIONS PRESENTED FOR REVIEW

I. Does an apartment building owner, by applying for an apartment house building license, automatically consent to an inspection of the individual apartment units, for violations of Chapter 2 of the Housing Regulations (the Housing Code) as well as violations of Articles 310 and 320 of Chapter 3 of the Housing Regulations (the general licensing regulations and licensing regulations governing operation of housing businesses)?

II. Does the entry upon and inspection of the individual dwelling units of a licensed apartment building by a District of Columbia housing inspector during an annual licensing inspection for violations of the Housing Code, without a warrant or probable cause to believe that Housing Code violations exist within the individual units, violate the building owner's rights under the Fourth and Fifth Amendments?

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED FOR REVIEW . . . . . *(i)*

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL PROVISIONS' STATUTES AND REGULATIONS INVOLVED 2

STATEMENT OF THE CASE 4

A. The Proceedings Below 4

B. The Regulatory Scheme 7

REASONS FOR GRANTING THE WRIT 10

I. The Court of Appeals Interpretation of D.C. Code § 47-2302 And Section 3103.1 Of The Housing Regulations To Include The Implied Consent Of An Apartment House Owner To The Inspection Of Individual Dwelling Units For Violations Of The Housing Code Contravenes The Plain Meaning Of The Statute And Regulations And Violates The Owner's Rights To Be Safe From Unreasonable Searches And Seizures Under The Fourth Amendment And Due Process Under the Fifth Amendment 10

II. The Court Of Appeals' Construction Of The Licensing Statute And The Housing Regulations Constitutes An Erosion Of The Protection Of The Fourth Amendment And Would Do Away With The Need For A Search Warrant In All Walks Of Life Where Any Activity Engaged In Requires A License 15

III. The Decision Of The Court Of Appeals Is In Irreconcilable Conflict With The Rationale Of This Court's Holding In *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) And *United States v. Biswell*, 406 U.S. 311 (1972) 18

Page

CONCLUSION 22

APPENDICES. 1a

Appendix A - Memorandum Opinion and Judgment of the District of Columbia Court of Appeals 1a

Appendix B - Decisions of District of Columbia Board of Appeals and Review in Appeal Nos. 79-304 and 79-457 . . . . . 12a

Appendix C - Applicable Provisions of District of Columbia Housing Regulations. 16a

TABLE OF AUTHORITIES

Cases:

Camara v. Municpal Court, 387 U. S. 523 (1969). 18

Colonnade Catering Corp. v. United States, 397 U.S. 72 (1970) 19, 20

Gardner v. Broderick, 392 U.S. 273 (1968). 16

Holmes v. District of Columbia, 351 A.2d 518 (D.C. App. 1976) 12

Marshall v. Barlow's Inc., 436 U.S. 307 (1978) 19

Neumann Properties, Inc. v. District of Columbia, 268 A.2d 605 (D.C. App. 1970). 13

People ex rel. Roth v. Younger, 327 Mich. 410, 42 N.W.2d 120 (1950) 17

Pernell v. Southall Realty, 416 U.S. 363 (1974). 13

See v. City of Seattle, 387 U.S. 541 (1967). 18, 21

Semayne's Case, 5 Co. Rep. 91a, 77 Eng. Rep. 194 (1603). 22, 23

Uniformed Sanitation Men Association, Inc. v. Commisioner of Sanitation, 392 U.S. 280 (1968). 16

United States v. Biswell, 406 U.S. 311 (1972) 21

Constitutional and Statutory Provisions:

United States Constitution:

Fourth Amendment 2

Fifth Amendment 2

United States Code:

28 U.S.C. 1257(3) 2

District of Columbia Code, 1973:

§47-2302 . . . . . 2, 10, 13, 20

§47-2328 . . . . . 3, 8, 13

District of Columbia Housing Regulations (1955):

§1301 9

§2102 . . . . . 7, 12

§2104 15

§2701 . . . . . 9, 12

§3101 . . . . . 7, 8, 11, 12

§3103 . . . . . 8, 11, 14

§3101.1 . . . . . 8, 11

§3104 8

§3202 9

§3207 9

§3303 . . . . . 14, 16

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PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

Petitioner, Talley R. Holmes, Jr., prays that a writ of certiorari be issued to review the judgment of the District of Columbia Court of Appeals entered September 30, 1980.

OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is not yet reported. The text of the opinion is reproduced at Appendix A., *infra*.

The decisions of the District of Columbia Board of Appeals and Review, as to which review was sought in the

District of Columbia Court of Appeals, are reproduced at Appendix B, *infra*.

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on September 30, 1980. The jurisdiction of this Court to review the decision below is conferred by 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

Fourth Amendment, United States Constitution

"The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the papers or things to be seized."

Fifth Amendment, United States Constitution

"No person . . . shall be . . . deprived of life, liberty, or property, without due process of law . . ."

District of Columbia Code, 1973

"§ 47-2302. Compliance with fire escape laws and regulations required before license is issued.

"No license shall be issued to any person for the operation of a business in any building or part thereof containing living or lodging quarters of any description required to be licensed under the authority of this Act, nor for any place of public assembly required to be licensed as hereinafter provided, nor for any other building or place mentioned in sections 5-317 to 5-323, required to be licensed as

hereinafter provided or required to be licensed in any other Act of Congress, until the Director of Inspection, the Chief Engineer of the Fire Department, and any other official of the District of Columbia who shall be designated by the Commissioners of the District of Columbia, have certified in writing to the Commissioners of the District of Columbia or their designated agent that the applicant for license has, as to such building or place, complied with all laws enacted and regulations made and promulgated for the protection of life and property."*

"§ 47-2328. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.

"The District of Columbia Council is authorized and empowered to classify, according to use, method of operation, and size, buildings containing living or lodging quarters of every description, to require licenses for the businesses operated in each such building as in its judgment requires inspection, supervision or regulation by any municipal agency or agencies, and the Commissioner of the District of Columbia is authorized and empowered to fix a schedule of license fees therefor in such amount as, in his judgment, will be commensurate with the cost to the District of Columbia of such inspection, supervision or regulation: *Provided, however,* that no license shall be required for single-family or

*The District of Columbia Council and the office of the Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon January 2, 1975, by D.C. Code § 1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by D.C. Code § § 141 and 161.

two-family dwellings, nor for a rooming house offering accommodations for no more than four roomers."*

Housing Regulations of the District of Columbia

The following pertintent sections of the District of Columbia Housing Regulations, established by Commissioners' Order dated August 11, 1955, are reproduced at Appendix C, *infra*.

§ 1301	§ 3101	§ 3204	§ 3210
§ 1302	§ 3102	§ 3205	§ 3211
§ 2101	§ 3104	§ 3206	§ 3212
§ 2102	§ 3106	§ 3207	§ 3301
§ 2104	§ 3201	§ 3208	§ 3302
§ 2105	§ 3203	§ 3209	§ 3303

STATEMENT OF THE CASE

A. The Proceedings Below

The proceedings before the District of Columbia Court of Appeals were consolidated appeals from two decisions of the District of Columbia Board of Appeals and Review upholding the noting of violations of the District of Columbia Housing Regulations by housing inspectors employed by the Department of Housing and Community Development, sustaining (in Appeal No. 79-304) the Department's order to correct violations, and sustaining

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*The District of Columbia Council and the office of the Commissioner of the District of Columbia, as established by Reorg. Plan No. 3 of 1967, were abolished as of noon January 2, 1975, by D.C. Code §1-131, and replaced by the Council of the District of Columbia and the office of Mayor of the District of Columbia, respectively, as provided by D.C. Code §§141 and 161.

(in Appeal No. 79-457) the denial of an apartment house license by the Department of Economic Development based on the noting of such violations.[1] In each case, petitioner's basis for challenging the Department's orders was that warrantless searches for the purpose of conducting inspections in the individual dwelling units for violations of the Housing Code (Chapter 2 of the Housing Regulations), in addition to inspection for violations of the licensing regulations (Chapter 3 of the Housing Regulations), violate the building owner's rights under the Fourth and Fifth Amendments to the Constitution, absent probable cause to believe that violations of the Housing Code exist within the individual dwelling units. Therefore, any evidence of Housing Code violations was invalid because illegally obtained.

Appeal No. 79-304

Petitioner is the owner of a three-unit apartment building located at 1209 S Street, N.W., Washington, D.C. Pursuant to an application for a certificate of occupancy, an inspection of 1209 S Street, N.W. was carried out by a housing inspector employed by the Department of Housing and Community Development. It was later determined that the inspection for a certificate of occupancy was performed erroneously after the certificate had previously been granted, and the inspection was treated as an inspection for renewal of the apartment house license for the building.

As a result of the inspection, 122 violations of the District of Columbia Housing Regulations were noted,

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[1] The decisions of the Board of Appeals and Review are reproduced at Appendix B, *infra*.

and petitioner was ordered to correct the violations within 60 days. Petitioner appealed this order to the District of Columbia Board of Appeals and Review (Board).

In the proceedings before the Board, the petitioner stipulated that the housing violations noted in the order continued unabated and that the three housing units contained in the premises at 1209 S Street, N.W. were occupied on the date of the housing inspections. Petitioner's basis for challenging the housing violation order before the Board was that the housing inspector was without authority to inspect the individual living units in the premises without a warrant, absent a showing of probable cause to believe that violations of the Housing Code existed within and that, therefore, the order to abate was invalid and unenforceable.

The Board ruled that the inspector was vested with authority to make periodic inspections of the subject premises, including the individual apartment units, and therefore knowledge of the violations was legally obtained.

Appeal No. 79-457

At the time of the administrative proceedings, petitioner was the owner of a building located at 1839 13th Street, N.W., Washington, D.C., which was operated as a hotel and apartment house. On December 13, 1976, the Business Licenses and Permits Division of the District of Columbia Department of Economic Development notified the petitioner that renewal of his apartment house license for 1839 13th Street, N.W. was denied due to petitioner's noncompliance with certain requirements of the District of Columbia Housing Regulations, which were noted as a result of an annual license inspection.

The licensing inspection included inspection of the individual apartment units for violations of the Housing Code.

Petitioner appealed the denial of the apartment house license to the Board. In the proceedings before the Board, petitioner did not contest the existence of the noted violations, but contended that the Chief of the Business Licenses and Permits Division was without authority to deny petitioner renewal of an apartment house license because the entry of the inspector into the individual housing units was illegal, absent a warrant or a showing of probable cause to believe that violations of the Housing Code would be found within the individual units. Due to an administrative oversight, the Board did not issue its decision until April 11, 1979, when it held that the notation of the Housing Code violations, and the issuance of the order to abate the violations were the result of a legal and proper licensing inspection.

B. The Regulatory Scheme

The District of Columbia Housing Regulations, originally promulgated in 1955, are arranged in seven chapters.[2] Chapter 1 contains definitions and general provisions applicable to all premises used for residential purposes. Chapter 2 is the "Housing Code of the District of Columbia", which provides at Section 2102 defining the scope of the Housing Code that it shall apply to every premises used as a place of abode for human beings. Chapter 3 contains the general licensing regulations, and Section 3101 defines the scope of the licensing regula-

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[2] Pertinent sections of the Housing Regulations are reproduced at Appendix C, *infra*.

tions as applicable to housing businesses which are licensed pursuant to § 47-2328 of the District of Columbia Code. Section 3101 further provides that in case any provision contained in Chapter 3 (the licensing regulations) conflicts with or supersedes a provision contained in Chapters 1 or 2, the licensing regulation shall prevail. In addition, Chapter 3 contains provisions governing inspection and right of entry, which provide in pertinent part:

> Sec. 3103 – Inspection.
>
> The Director of Licenses and Inspections, the Fire Chief, the Director of Public Health, and the Director of Public Welfare shall inspect every licensed housing business and any premises for which a housing business license application has been filed with the District of Columbia, and the Chief of Police shall inspect every licensed housing business as follows:
>
> 3103.1 The Director of Licenses and Inspections to determine conformity with the applicable provisions of the license laws and regualtions, and to require that the building or part thereof comply with the applicable provisions of the laws and regulations enforced by him relating to buildings and appurtenances thereof.
>
> Sec. 3104 – Right of Entry.
>
> 3104.1 The District of Columbia, both prior to the issuance of a housing business license and during the license period, shall have the right at all reasonable hours to enter and inspect the premises occupied or to be occupied by such housing business. . . .

The scope of the licensing inspection is limited by the provisions of Chapter 3, Article 320, of the Housing Regulations. Article 320 limits the licensing inspection, in

substance, to only the public or common areas of the building, to check for compliance with the provisions relating to adequate lighting in stairs and hallways, maintenance of fire escapes and fire alarm systems, and the like. Only Sections 3202 and 3207 of the licensing regulations require the licensing inspector to enter a private dwelling unit, to inspect the mattresses (where they are furnished by the landlord) and the heating and cooking appliances.

The Housing Regulations at Section 1301 and the Housing Code at Section 2701 each expressly provide that a housing inspector must have "reasonable grounds" to believe that a violation of the regulations exists before he reports such a violation to his superiors:

> Section 1301. Notice.
>
> Whenever any duly designated agent of the District of Columbia determines that there are reasonable grounds to believe that there exists a violation of any provision of these regulations, he shall make a report to the Director of the Department of Licenses and Inspections . . .
>
> Section 2701. Notice.
>
> Whenever any duly designated agent of the District of Columbia determines that there are reasonable grounds to believe that there exists a violation of any provision of this Code (he) shall make a report to the head of the Housing Division of the Department of Licenses and Inspections . . .

The District of Columbia Court of Appeals held that the "reasonable grounds" or probable cause requirements of Sections 1301 and 2701 of the Housing Regulations do *not* require that an inspector have probable cause to believe a violation exists *before* inspecting the individual

dwelling units, but only require that the inspector have reasonable grounds to believe a violation exists *after* he has already inspected the premises. (See Opinion of Court of Appeals Appendix A, *infra*, page 8, n. 13.)

The Court of Appeals further held that in applying for housing business licenses to operate the apartment houses involved, the petitioner consented to inspection of the entire premises, including the individual dwelling units, for compliance with both the licensing regulations and the Housing Code and affirmed the decisions of the Board of Appeals and Review. This petition followed.

REASONS FOR GRANTING THE WRIT

I.

THE COURT OF APPEALS INTERPRETATION OF D.C. CODE §47-2302 AND SECTION 3103.1 OF THE HOUSING REGULATIONS TO INCLUDE THE IMPLIED CONSENT OF AN APARTMENT HOUSE OWNER TO INSPECTION OF INDIVIDUAL DWELLING UNITS FOR VIOLATIONS OF THE HOUSING CODE CONTRAVENES THE PLAIN MEANING OF THE STATUTE AND REGULATIONS AND VIOLATES THE OWNER'S RIGHT TO BE SAFE FROM UNREASONABLE SEARCHES AND SEIZURES UNDER THE FORUTH AMENDMENT AND DUE PROCESS UNDER THE FIFTH AMENDMENT.

Congress, in enacting the licensing requirements of D.C. Code § 47-2302 was obviously concerned with establishing standards for the protection of the public in business places containing living quarters. The Commissioners of the District of Columbia sought to implement this concern by promulgating the District of Columbia Housing Regulations in 1955, and particularly Chapters 3

through 8,[3] which govern licensed housing businesses. The Commissioners took care to establish different sets of regulations for different types of housing, and the scope of each Chapter is explicitly set forth in the regulations.

Section 3101 of the general licensing regulations expressly provides:

> Section 3101. Scope.
>
> This Chapter 3 of the Housing Regulations of the District of Columbia shall be applicable to housing businesses licensed under the authority contained in . . . Sec. 47-2328, D.C. Code . . . *Provided*, That whenever any provision contained in this Chapter 3 shall conflict with or supercede a provision contained in Chapter 1 or 2, the provision contained in this chapter shall be applicable.

Section 3103 of the general licensing regulations defines the scope of the inspection which the licensing inspector is authorized to perform under the licensing regulations:

> Section 3103. Inspection.
>
> The Director of Licenses and Inspections . . . shall inspect every licensed housing business . . . as follows:
>
> 3103.1 . . . to determine conformity with the applicable provisions of the license laws and regulations, and to require that the building or part thereof comply with the applicable provisions of the

[3] Chapter 8 has since been repealed.

> laws and regulations enforced by him relating to buildings and appurtenances thereto.

By these provisions, the licensing inspector is authorized to inspect for violations of the license laws and regulations. He is not authorized to conduct an inspection of the individual living units of an apartment building for violations of the Housing Code until he has demonstrated, in accordance with the provisions of Section 2701 of the Code (incorporated by reference into the licensing regulations) that he has "reasonable grounds" to believe that violations of the Housing Code exist within the individual dwelling unit *before* conducting an inspection.

Section 2102 of the Housing Regulations defines the scope of the Housing Code as follows:

> Section 2102. Scope.
>
> The regulations contained in this Code shall apply to every premises or part thereof occupied, used or held out for use as a place of abode for human beings.

The scope of the licensing regulations as set forth in Section 3101 is much narrower than that of the Housing Code in Section 2102. The District of Columbia Court of Appeals has previously held in *Holmes v. District of Columbia*, 351 A.2d 518, 521 (D.C. App. 1976), that the provisions of Chapters 1 and 2 of the Housing Regulations are incorporated by reference into the licensing regulations of Chapter 3, however, this holding must be read in conjunction with the language of Section 3101 of the licensing regulations, *supra.* Where there is such an obvious conflict between the scope of these two provisions, the scope of the licensing regulations set forth in Section 3101 must prevail.

The Court of Appeals relies on its earlier decision in *Neumann Properties, Inc. v. District of Columbia,* 268 A.2d 605 (D.C. App. 1970) for its holding that in applying for a housing business license petitioner consented to inspection of the entire premises, including the individual apartment units, for violations of the Housing Code. However, this reliance is misplaced. *Neumann Properties* held, at 268 A.2d 606, that "in applying for the (apartment house) license, which is authorized by D.C. Code 1967, Sec. 47-2328, petitioner is taken to have consented to *the inspection made mandatory* under D.C. Code 1967, Sec. 47-2302." (Emphasis added.) The inspection "made mandatory" under § 47-2302 is the inspection of the public or common areas of the housing premises in accordance with the licensing provisions of Chapter 3 of the Housing Regulations, which permits entry into the individual apartment units only for the limited purposes of inspecting mattresses and heating and cooking appliances. (See Sections 3202 and 3207 of the licensing regulations at Appendix C, *infra.*)

This Court has the power to review the District of Columbia Court of Appeals' decision construing the licensing statute and regulations promulgated thereunder under the rationale of *Pernell v. Southall Realty,* 416 U.S. 363 (1974), where the Court announced the general principles it applies in reviewing final determinations of the District of Columbia Court of Appeals:

> "This new structure plainly contemplates that the decision of the District of Columbia Court of Appeals on matters of local law—both common law and statutory law—will be treated by this Court in a manner similar to the way in which we treat decisions of the highest court of a State on questions of

> state law. Congressional Acts directed toward the District, like other federal laws, admittedly come within this Court's Art. III jurisdiction, and we are therefore not barred from reviewing the interpretations of those Acts by the District of Columbia Court of Appeals in the same jurisdictional sense that we are barred from reconsidering a state court's interpretation of a state statute... But the new court structure certainly lends additional support to our longstanding practice of not overruling the courts of the District on local law matters 'save in exceptional situations where egregious error has been committed.' " (Citations omitted.)

The erroneous interpretation placed on the licensing statute and the regulations thereunder by the District of Columbia Court of Appeals has ominous and far reaching gious and is one which has ominous and far reaching implications for the constitutional rights of anyone engaging in a licensed activity in the District of Columbia. The Court of Appeals' holding sanctions the repeated, annual invasion of the private dwelling areas of a housing business, not for the concededly valid purpose of enforcing the licensing provisions of the housing regulations, but for the purpose of conducting a minute and detailed inspection of every facet of the dwelling unit for violations of the Housing Code. Refusal, on the part of either the landlord or the tenant, to permit such an inspection, may result in imposition of criminal sanctions of a fine or imprisonment. (See §§3104.1, 3104.2, and 3303.) The landlord may also be deprived of his housing business license. (§§3104.2 and 3302.) Where such significant constitutional rights are held to have been waived merely by the application for a license from an agency of the state, review by this Court to preserve such rights and liberties is of vital importance.

II.

THE COURT OF APPEALS' CONSTRUCTION OF THE LICENSING STATUTE AND THE HOUSING REGULATIONS CONSTITUTES AN EROSION OF THE PROTECTION OF THE FOURTH AMENDMENT AND WOULD DO AWAY WITH THE NEED FOR A SEARCH WARRANT IN ALL WALKS OF LIFE WHERE ANY ACTIVITY ENGAGED IN REQUIRES A LICENSE.

The Court of Appeals asserts that the licensing provision results in a waiver of the petitioner's Fourth Amendment rights regarding inspection of the individual living units of the apartment building. However, the Court of Appeals cites no authority in support of this holding apart from its own interpretation of the statute, and the language of the statute and regulations does not support the Court of Appeals' determination.

Furthermore, the Court of Appeals completely disregards the fact that petitioner is subjected to criminal sanctions if he fails to comply with the order to abate the Housing Code violations cited within the individual living units. Section 2104 of the Housing Code provides:

> Sec. 2104. Penalty.
>
> Any person who fails to comply with any provision of this Code after expiration of the time of compliance established in accordance with this Code shall upon conviction be punished by a fine not to exceed $300, or by imprisonment for not to exceed 10 days, in lieu of or in addition to any fine, for such failure to comply. In the event of any failure so to comply, each and every day such violation continues shall constitute a separate offense, and the

> penalties prescribed above shall be applicable to each such offense, except that no further penalties shall be imposed for the period during which any appeal from a conviction of such offense is pending.

To hold that petitioner, in applying for his housing business license, waives the protections of the Fifth Amendment as well as those of the Fourth Amendment contradicts this Court's holdings in such cases as *Gardner v. Broderick*, 392 U.S. 273 (1968) and *Uniformed Sanitation Men Assn., Inc. v. Commissioner of Sanitation*, 392 U.S. 280 (1968), striking down a statute purporting to require a city employee to waive his Fifth Amendment rights or be discharged for failure to sign such a waiver and testify before a grand jury. The coercion of Section 3303 of the licensing regulations, which imposes similar penalties of fine or imprisonment for failure to permit an inspection of the housing premises, is not the voluntary waiver of a Constitutional right which this Court and the Constitution itself requires. (See Section 3303 of the licensing regulations at Appendix C, *infra.*)

The rationale of the Court of Appeals would require that voluntary participation in any licensed activity would require a concomitant waiver of Fourth Amendment rights. The Supreme Court of Michigan, when asked to review the constitutionality of a statutory provision permitting conservation officers to make certain wildlife inspections without a warrant, struck down the statute as unconstitutionally permitting unreasonable searches and seizures. The court reasoned:

> "Under Michigan law a man may not marry a wife, operate a motor vehicle on the highways, practice law or a number of other things without a license from the State. May the legislature condition the granting of such licenses upon the applicant's waiver of his constitutional rights against unreasonable search of his home, marital chamber, automobile, law office or other place where a licensed activity occurs? It does not appear that legislative ingenuity has yet reached an end to finding reasons and justification for subjecting further myriads of activities to licensing requirements, such reasons ranging from preserving of the public health, safety, morals and welfare to insuring collection of the public revenues. Were we to hold that in every instance in which a license may lawfully be required its granting may at the same time be conditioned upon waiver of constitutional rights against unreasonable search, *what area could conceivably remain immune and beyond legislative reach*, upon which the constitutional guaranty might still operate?" (Emphasis added.) *People ex rel. Roth v. Younger*, 327 Mich. 410, 413, 42 N.W.2d 120, 125 (1950).

This is the vitally important question which this Court is asked to decide: Did the Court of Appeals misconstrue the legislative intent in holding that Congress intended the operator of a licensed housing business to waive his constitutional rights against unreasonable searches and seizures by applying for a housing business license? If this Court determines that the Court of Appeals' interpretation is correct, the next question, of even greater significance, is whether Congress may constitutioanlly impose such a requirement.

III.

THE DECISION OF THE COURT OF APPEALS IS IN IRRECONCIABLE CONFILCT WTIH THE RATIONALE OF THIS COURT'S HOLDING IN *COLONNADE CATERING CORP. v. UNITED STATES*, 397 U.S. 72 (1970) AND *UNITED STATES v. BISWELL*, 406 U.S. 311 (1972).

In recent years, this Court has rendered a quintet of decisions delineating the applicability of the Fourth Amendment to administrative searches. In its landmark decision in *Camara v. Municipal Court* 387 U.S. 523 (1967), the Court held that the protection of the Fourth Amendment applies not only to searches relating to strictly criminal activity, but to administrative searches to enforce municipal fire, health and housing regulations as well, and that without a warrant procedure, such inspections lack the traditional safeguards which the Fourth Amendment guarantees to the individual. 387 U.S. at 534. In discussing the reasoning behind application of the Fourth Amendment to administrative searches, the Court stated:

> "Like most regulatory laws, fire, health, and housing codes are enforced by criminal processes. In some cities, discovery of a violation by the inspector leads to a criminal complaint. Even in cities where discovery of a violation produces only an administrative compliance order, refusal to comply is a criminal offense, and the fact of compliance is verified by a second inspection, again without a warrant. Finally, as this case demonstrates, refusal to permit an inspection is itself a crime, punishable by fine or evey by jail sentence." 387 U.S. at 531.

In *See v. City of Seattle*, 387 U.S. 541 (1967), which involved an attempted administrative search of a commer-

cial warehouse for compliance with the municipal fire code, the Court held that the Fourth Amendment safeguards applied to official inspection of commercial premises as well, concluding that administrative entry, without consent, upon the portions of commercial premises which are not open to the public, may only be compelled within the framework of a warrant procedure. 387 U.S. at 545. The Court reaffirmed this holding more recently in *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978), involving the attempted inspection of a business by an inspector from the Occupational Safety and Health Administrative for safety hazards and violations of OSHA's regulations. The Court held that § 8(a) of the Occupational Safety and Health Act of 1970, which purported to authorize inspections without a warrant or its equivalent, violated the Fourth Amendment, but that authority to inspect under a warrant pursuant to § 8(a) did not depend upon a demonstration of probable cause to believe that a violation of the Act existed on the premises. Rather, the warrant could be based on a showing that reasonable legislative or administrative standards for conducting the inspection were satisfied with respect to a particular establishment. 436 U.S. at 317.

None of the foregoing cases, however, involved a warrantless inspection of a business which was licensed by an agency of the government. *Colonnade Catering Corp. v. United States*, 397 U.S. 72 (1970) was the first Supreme Court case to address this issue. In *Colonnade* the Court held that agents of the Alcohol and Tobacco Tax Division of the Internal Revenue Service could not constitutionally break and enter a locked storeroom to inspect bottles of liquor suspected to evidence violation of the federal excise tax law. A provision of the Internal Revenue Code authorized the agents to enter and inspect the premises of the liquor dealer, and another section of

the Code provided for the imposition of a fine for the refusal to permit the agent to enter and inspect. The question presented was whether the imposition of a fine for the refusal to permit entry was the exclusive sanction under this statutory scheme, absent a warrant to break and enter. The Court noted the long history of pervasive regulation of the liquor industry and stated that Congress has broad powers to fashion standards of reasonableness for searches and seizures under the inspection provisions of the liquor laws. 72 U.S. at 75-76. However, in holding the warrantless entry by the Internal Revenue Service inspectors to be unconstitutional, the Court reasoned:

> "Where Congress has authorized inspection but made no rules governing the procedure that inspectors must follow, the Fourth Amendment and its various restrictions apply." 72 U.S. at 77.

Colonnade, supra, stood for the proposition that there must be reasonable provisions within the act authorizing inspections to safeguard the constitutional rights of a proprietor from unreasonable search and seizure. As in *Colonnade*, Congress in the licensing statute codified at D.C. Code § 47-2302 made no rules governing the procedures that inspectors must follow.[4] Lacking such rules, the agents of the District of Columbia in performing a licensing inspection must obtain a search warrant

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[4] The Commissioners of the District of Columbia promulgated the housing regulations and the licensing regulations in a effort to establish procedures to be followed by inspectors. However, as the record before the Court of Appeals disclosed, the inspectors routinely ignore the requirement of the regulations themselves that a licensing inspector must have "reasonable grounds" to believe that violations of the Housing Code exist within an individual living unit before inspecting for such violations, and the decision of the Court of Appeals sanctions this interpretation.

unless the operator of the licensed premises voluntarily consents to the inspection.

United States v. Biswell, 406 U.S. 311 (1972), was the second case decided by this Court involving a warrantless administrative inspection of a licensed business. In *Biswell*, where the Court upheld provisions of the federal gun control law which authorized inspection of the business premises of licensed firearms dealers without a search warrant requirement, the Court discussed the criteria which a warrantless administrative inspection scheme must meet in order to avoid being held "unreasonable" under the Fourth Amendment. Under the rationale of *Biswell*, to not be held "unreasonable", a warrantless administrative inspection must be (1) essential to the purposes of the statute which purports to authorize it; (2) further urgent governmental interests; and (3) constitute a minimal invasion of privacy. 406 U.S. at 315.

The Court distinguished the situation in *Biswell*, where the provision for a warrantless inspection was held to meet the above criteria, from that in *See v. City of Seattle*, 387 U.S. 541 (1967). In *Biswell*, close scrutiny of traffic in firearms was found to be of central importance to federal efforts to prevent violent crime, and unannounced inspections were found to be essential, since the need for a warrant could frustrate the inspection by permitting the firearms dealer to remove or conceal evidence of a violation. The Court also noted that when a person chooses to engage in the pervasively regulated business of dealing in firearms, his justifiable expections of privacy are limited. 406 U.S. at 316. In contrast to the situation in *See v. City of Seattle, supra*, where a warrant requirement was imposed by the Court,
situation involved here,

> "the mission of the inspection system was to discover and correct violations of the building code, conditions that were relatively difficult to conceal or to correct in a short time. Periodic inspection sufficed, and inspection warrants could be required and privacy given a measure of protection with little if any threat to the effectiveness of the inspection there at issue."

Apart from the fact that the petitioner operated a licensed housing business, this is virtually identical to the situation involved in the instant case.

A warrant requirement for inspection of the individual dwelling units in a licensed apartment building in the instant case would not significantly impede the effectiveness of the statute's and regulation's provisions, since the type of conditions which the inspectors note are not those which could be temporarily concealed or ameliorated, like possession of unregistered firearms in *Biswell*. Furthermore, the imposition of a warrant requirement would grant some measure of protection to the important privacy interests of both the building owner and the tenants, while imposing very little burden on the governmental inspectors.

CONCLUSION

The increasing requirements of governmental agencies at all levels that various activities be licensed and that those activities submit to administrative inspections raises serious questions about the constitutionality of imposing inspection requirements on licensed activities without the safeguards of a search warrant absent exigent circumstances. The importance of guaranteeing to the individual a certain area that is free from intrusion by the state cannot be denied. Nearly 400 years ago in *Semayne's*

Case, 5 Co. Rep. 91a, 91b, 77 Eng. Rep. 194, 195 (1603), the court stated the rationale which later gave impetus to the enactment of the Fourth Amendment:

> "That the house of every one is to him as his castle and fortress, as well for his defence against injury as for his repose . . . "

The decision of the Court of Appeals in the instant case, if permitted to stand, would seriously erode the constitutional protections which the Fourth Amendment guarantees. To protect our ancient liberties, exercise of governmental powers to conduct regulatory inspections, even where a licensed activity is involved, should be held to be subject to the provisions of the Fourth Amendment.

For the foregoing reasons, petition prays that his petition for a writ of certiorari to the District of Columbia Court of Appeals be granted.

Respectfully submitted,

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Counsel for Petitioner.

APPENDIX A

DISTRICT OF COLUMBIA COURT OF APPEALS

No. 79-304 & No. 79-457

TALLEY R. HOLMES, JR., PETITIONER,

v.

DISTRICT OF COLUMBIA BOARD OF APPEALS AND REVIEW, RESPONDENT.

Judgment entered this date

Petitions for Review of Decisions of the District of Columbia Board of Appeals and Review

(Argued January 22, 1980 Decided September 30, 1980)

Henry A. Berliner, with whom *Donald W. Evans* was on the briefs, for petitioner.

Richard B. Nettler, Assistant Corporation Counsel, with whom *Judith W. Rogers*, Corporation Counsel, and *Richard W. Barton*, Deputy Corporation Counsel at the time the brief was filed, were on the brief, for respondent.

Before GALLAGHER, MACK, and FERREN, *Associate Judges*.

GALLAGHER, *Associate Judge*: This case involves consolidated petitions for review of two decisions by respondent, the District of Columbia Board of Appeals and Review (Board), upholding the noting of violations of the District of Columbia Housing Regulations. In No. 79-304, the Board sustained an order issued by the De-

partment of Housing and Community Development to correct the noted violations, and in No. 79-457, the Board sustained the denial of an apartment house license by the Department of Economic Development based on the noting of such violations. In each case, petitioner, Talley R. Holmes, Jr., bases his challenge to the Board's actions on the contention that warrantless searches for the purpose of conducting housing inspections in individual, private apartment units violate the Housing Regulations. Therefore, he says, the Board's action is capricious and contrary to law. Petitioner also contends that the inspections violated his Fourth Amendment guarantee against unreasonable search and seizure. We affirm.

No. 79-304

On June 23, 1978, petitioner applied for a certificate of occupancy for a three-unit apartment building owned by him and located at 1209 S Street, N.W. Pursuant to the application, inspections of the entire premises were carried out on July 11 and 18, 1978,[1] and 122 violations of the D.C. Housing Regulations were noted. By notice served

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[1] These inspections were performed by a District of Columbia housing inspector who was unaware that the certificate of occupancy application, which triggered the inspection, had been granted on June 23, 1978, the same day the application was filed. The Department of Housing and Community Development indicated in a letter to the Board of Appeals and Review dated October 24, 1978 that the July inspection would be treated as the inspection for license renewal. Apparently as the result of an administrative error, the premises were inspected again for licensing purposes on September 8, 1978. Housing Code violation notices resulting from this inspection were served on October 11, 1978. Petitioner has raised no claim of error based on the treatment of these inspections as licensing inspections.

on September 20, 1978, petitioner was ordered to correct the violations within 60 days.

Petitioner appealed the order to the Board, which heard testimony on February 14, 1979. He stipulated that the violations existed and were unabated as of February 2, 1979, and that the premises were occupied on the date of inspection, but contended nevertheless that the order to abate was invalid and unenforceable because the housing inspector was without authority to inspect individual living units in the premises absent a showing of probable cause.

In a decision issued on March 5, 1979, the Board ruled that the inspector was vested with authority to make periodic inspections of the subject premises and therefore knowledge of the violations was legally obtained.

No. 79-457

This appeal involves the premises at 1839 13th Street, N.W., which petitioner owned and operated as a hotel and apartment house. On December 13, 1976, following an annual license inspection which included inspection of the individual apartment units, the Business Licenses and Permits Division of the District of Columbia Department of Economic Development notified petitioner that renewal of his apartment license was denied due to unabated Housing Code violations.[2]

Petitioner appealed to the Board and a hearing was held in the Spring of 1977. Petitioner did not contest the existence of the violations but contended before the Board that the Chief of the Business Licenses and Permits Division was without authority to deny renewal of

[2] Notice of 351 Housing Code violations had been issued with respect to this premises on November 15, 1976.

the license because the entry of the inspector into the individual housing units was illegal absent a warrant or a showing of probable cause to believe that violations of the Housing Code would be found within the individual units. Due to an administrative oversight, the Board did not issue its decision until April 11, 1979, when it held that the notation of the Housing Code violations, and the issuance of the order to comply with the Housing Regulations were the result of a legal and proper licensing inspection.

The Regulatory Scheme:

The District of Columbia Housing Regulations,[3] originally promulgated in 1955, are arranged in seven chapters.[4] Chapter one contains definitions and general provisions applicable to all premises used for residential purposes.[5] Chapter two is the "Housing Code of the District of Columbia." Promulgated "for the purpose of preserving and promoting the public health, safety, welfare, and morals,[6] the broad health, safety and sanitation" provisions of this chapter apply "to every premises or part thereof occupied, used or held out for use as a place

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[3] 5G DCRR (1970).

[4] An eighth chapter, affecting nursing homes, was repealed by the Community Residence Facilities Licensure Act of 1977, D.C. Law 2-35 § 201(b).

[5] These provisions govern: heat, waterproof floors in toilets, yard drainage, custodial care in multiple dwellings, sheds and fences, accumulation of refuse, radio and television antennas, construction details and occupancy limitations for fire safety. §§ 1201-1210.

[6] D.C. Housing Regs. § 2101.

of abode for human beings." [7] Chapter two also contains a right of entry provision which authorizes "[a]ny duly designated agent of the District of Columbia . . . at all reasonable hours, lawfully to enter any premises for the purpose of enforcing these regulations." [8]

The succeeding chapters of the Housing Regulations deal with the licensing of premises in which housing businesses are conducted pursuant to D.C. Code 1973, § 47-2328.[9] Chapter three contains the general licensing

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[7] D.C. Housing Regs. § 2102. Chapter two lays down minimum standards of repair, sanitation, and occupancy. The subchapters or articles thereof concern right of entry and penalties for noncompliance (Article 210); minimum standards of natural light and ventilation and the height of habitable rooms (Article 220); minimum standards to prevent overcrowding and unsanitary conditions (Article 230); necessary hot water, plumbing, electrical, heating, sewage and other facilities and services (Article 240); general maintenance and repair of the entire structure (Article 250); cleanliness and sanitation in and around residential premises (Article 260); and procedures for notice of violations, appeal and hearing, and permits (Article 270).

[8] D.C. Housing Regs. § 2103.

[9] D.C. Housing Regs. § 3101.

§ 47-2328. *Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.*

The District of Columbia Council is authorized and empowered to classify, according to use, method of operation, and size, buildings containing living or lodging quarters of every description, to require licenses for the business operated in each such building as in its judgment requires inspection, supervision or regulation by any municipal agency or agencies, and the Commissioner of the District of Columbia is authorized and empowered to fix a schedule of license fees therefor in such amount as, in his judgment, will be commensurate with the cost to the District of Columbia of such

regulations, with provisions for granting, revocation and posting of licenses, and for registration of managers.[10] Chapter three also contains an express direction that its provisions shall control when in conflict with the provisions of chapters one or two, and provides additional minimum standards for the operation of these buildings.[11] In addition, chapter three contains provisions governing inspection and right of entry which provide in pertinent part:

> Sec. 3103—Inspection.
>
> The Director of Licenses and Inspections, the Fire Chief, the Director of Public Health, and the Director of Public Welfare shall inspect every licensed housing business and any premises for which a housing business license application has been filed with the District of Columbia, and the Chief of Police shall inspect every licensed housing business as follows:

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inspection, supervision or regulation: *Provided, however,* that no license shall be required for single-family or two-family dwellings, nor for a rooming house offering accommodations for no more than four roomers.

[10] D.C. Housing Regs. §§ 3102, 3105, 3106, 3301-3303.

[11] These standards apply to the operation of certain commercial enterprises in residential buildings, to operator-supplied mattresses, and to locks and keys, stairs and hallways, waste receptacles, combustible refuse, heating and cooking appliances, egress facilities, exit and emergency lighting, and fire regulations. Article 320.

Chapters one, two and three are expressly incorporated into the remaining chapters of the Housing Regulations which prescribe additional licensing requirements for apartment houses (§ 6101) and hotels (§ 7101). *See Whetzel v. Jess Fisher Management Co.*, 108 U.S.App.D.C. 385, 390, 282 F.2d 943, 948 (1960).

3103.1 The Director of Licenses and Inspections to determine conformity with the applicable provisions of the license laws and regulations, and to require that the building or part thereof comply with the applicable provisions of the laws and regulations enforced by him relating to buildings and appurtenances thereof.

* * * *

Sec. 3104—Right of Entry.

3104.1 The District of Columbia, both prior to the issuance of a housing business license and during the license period, shall have the right at all reasonable hours to enter and inspect the premises occupied or to be occupied by such housing business. . . .

I

Petitioner contends the right of entry under the general licensing regulations is limited to an inspection for compliance with the articles of chapter three. The "laundry list" of regulated subjects in chapter three pertains generally to the common areas of the premises,[12] with the exception of the provisions regulating mattresses and heating and cooking appliances. Although conceding that consistent provisions of chapter two (the Housing Code) are incorporated by reference into chapter three, petitioner argues that the chapter three (the Licensing Regulations) right of entry is narrower in scope than the chapter two right of entry and therefore the chapter two provision is inconsistent with chapter three and inapplicable. Thus, petitioner asserts that entry into the

[12] Compare n.7 and n.11, *supra*. The regulations make no express distinctions in their application between common areas and individual dwelling units.

individual dwelling units to inspect for compliance with the provisions of chapter two is not within the scope of a chapter three inspection. Conceding that, while on a chapter three licensing inspection, an inspector must enter the private areas to inspect mattresses and cooking appliances, petitioner nevertheless argues that the inspector may not inspect for or note chapter two (Housing Code) violations in these areas unless he had probable cause to believe that those violations existed *before* entry.[13]

Petitioner's argument is precluded by our decision in *Holmes v. District of Columbia Board of Appeals and*

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[13] Petitioner repeatedly contends that before an inspector may enter an individual apartment for purposes of noting violations of the Housing Code, he must have probable cause to believe that violations exist therein, citing §§ 3101 and 2701 of the Housing Regulations. Section 2701 which is for all practical purposes identical in language to § 1301, states that "[w]henever any duly designated agent of the District of Columbia determines that there are *reasonable grounds* to believe that there exists a violation of any provision of this Code shall make a report to the Head of the Housing Division of the Department of Licenses and Inspection of the District of Columbia, who shall, in his discretion, give notice of such alleged violation to the person or persons responsible therefore." Petitioner interprets the "reasonable grounds" as a "probable cause" requirement *before* inspection. [Emphasis added.]

Apart from failing to explain why this "probable cause" requirement should apply only to the individual apartment units and not the common areas, petitioner ignores both the content and the context of §§ 1301 and 2701. Both are subsections under articles dealing with notice, appeals and hearings. It is apparent from this context and from the plain language of the subsections that "reasonable grounds" must exist before an inspector reports violations to his superior, who then sends a notice to the landlord. Reasonable grounds exist *after* the inspection.

Review, D.C.App., 351 A.2d 518 (1976) in which we held that the Housing Code should be read into and enforced under the licensing provisions of the Housing Regulations. In *Holmes* we upheld the denial of an apartment house license based on unabated Housing Code violations relying on the language of § 2102 which makes the provisions of chapter two applicable to every premises used as a place of abode for human beings. To interpret chapter three's provisions as being applicable to the exclusion of chapter two would be contrary to the clear intent of the Housing Regulations. Thus, chapter three's right of entry and inspection provisions authorized the inspections complained of here.

II.

Petitioner concedes that in applying for housing business licenses for his buildings he had impliedly consented to inspection of the common areas for compliance with both the Housing Code and the licensing regulations, and to inspection of the individual units for compliance with the licensing regulations. He argues, however, that a warrantless inspection of the individual units for compliance with the Housing Code violates his Fourth Amendment rights. The District of Columbia, citing *Rakas v. Illinois*, 439 U.S. 128 (1978), contends petitioner may not raise a Fourth Amendment challenge to an inspection of tenants' apartments because he lacks a legitimate expectation of privacy therein. We need not decide, however, the question of the extent to which a landlord possesses a protected Fourth Amendment interest by virtue of a property right in a premises in which the rights of exclusive possession and control have

been surrendered to a tenant.[14] This case is governed by our decision in *John D. Neumann Properties, Inc. v. District of Columbia Board of Appeals and Review*, D.C. App., 268 A.2d 605 (1970). The landlord/petitioner in that case challenged warrantless inspections of individual units as violation of its Fourth Amendment rights. We held that in applying for an apartment house license, the petitioner "is taken to have consented to the inspection made mandatory under [D.C. Code 1973, § 47-2302]." *Id.* at 606.

Section 47-2302 commands that

> No license shall be issued to any person for the operation of a business in any building or part thereof containing living or lodging quarters of any description required to be licensed under authority of this Act . . . until the Director of Inspection . . . ha[s] certified in writing to the Commissioner of the District of Columbia or his designated agent that the applicant for license has, as to such building or place, complied with all laws enacted and regulations made and promulgated for the protection of life and property.

Neumann, supra, authoritatively construed this statutory provision to imply consent by the licensee to inspections necessary to permit certification of compliance with regulations "made and promulgated for the protection of life and property." The Housing Code provisions contained in chapter two of the Housing Regulations were expressly so promulgated. Housing Reg.

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[14] We note that this case does not involve the right of a tenant to object to an administrative search of his individual dwelling unit on Fourth Amendment grounds.

§ 2101. Accordingly, we hold that in applying for housing business licenses, petitioner had effectively consented to inspection of his entire premises for compliance with all applicable provision of the Housing Regulations, including both the licensing regulations and the Housing Code. The decisions of the Board of Appeals and Review are

Affirmed.

APPENDIX B

Decisions of District of Columbia
Board of Appeals and Review
in Appeal Nos. 79-304 and 79-457

APPEAL NO. 79-304

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF APPEALS AND REVIEW

Re: Docket Nos. H 2693 and H 2696

Appeals of Talley R. Holmes, Jr. from an order to correct violations of the Housing Regulations at premises 1209 S Street, N.W. and 1334 You Street, N.W.

At the proceeding before this Board on February 14, 1979, the Hearing Committee was composed of the following members: E. Veronica Pace, M. Brent Oldham and George Arthur Caldwell, Esquire, Chairman. Appearing on behalf of the Department was Chester V. McKenzie and Henry W. Houze.

Donald Evens, Esquire, represented the appellant and Serena E. Davis, Assistant Corporation Counsel, represented the Government. Appellant appeared. The record will reflect that there was a joint stipulation as to the violations existing on the subject premises.

Mr. Houze testified on re-inspection on February 2, 1979 that violations are still in existence. The appellant contends that even though the violations exist, knowledge of said violations was obtained by representatives of the Department without probable cause.

As indicated previously, both parties entered into a stipulation regarding the violations involved herein. A

"stipulation," . . . is an agreement, admission, or concession made in a judicial proceeding by the parties or their attorneys, respecting some matter incident thereto. (73 Am Jur Second 536).

The respective parties have cited different sections of the District of Columbia Housing Regulations that are applicable to their respective positions. Specifically, Article 130, Section 1301 and Article 210, Sections 2101 and 2303. It is apparent from the language contained in the herein before cited sections that any designated representative of the District of Columbia is vested with the authority to make periodic inspections of dwellings within the District of Columbia to further the purposes of the regulations as cited in Article 210, Section 2101.

DECISION

Therefore, by unanimous vote of the members of this committee, it is found that duly designated representatives of the District of Columbia were vested with the necessary authority to make periodic inspections of the subject premises and therefore the violations, as cited, were obtained in a legal manner. Accordingly, the actions of the Department are SUSTAINED.

GEORGE ARTHUR CALDWELL
Chairman, Hearing Committee

NOTICE TO ALL PARTIES March 25 1979

APPEAL No. 79-457

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF APPEALS AND REVIEW

Re: Docket No. M 2573

Appeal of Talley R. Holmes, Jr. from action of the Department of Economic Development denying application for an apartment house license for premises 1839 - 13th Street, N.W.

This is an appeal from the denial of an apartment house license for premises 1839 - 13th Street, N.W. based upon an unfavorable recommendation of the Housing Regulation Division, Department of Housing and Community Development.

At the proceedings before this Board on March 30, 1977, the Hearing Committee was composed of the following members: Benjamin F. Childs, Eugene E. Sobolewski, and Robert T. Smith, Esquire, Chairman.

Richard M. Tarby, Esquire, Assistant Corporation Counsel, represented the Department of Economic Development. George Windsor, Esquire, represented the appellant. Appellant testified in his own behalf.

Chester V. McKenzie, Chief, Business Licenses and Permits Division, and Johnny Nipper, Inspector, Housing Regulation Division, also testified.

Hearing on the subject appeal was originally scheduled for joint hearing on March 30, 1977 with appellant's Appeal No. M 2567 involving the same premises. Because of unavailability of certain witnesses, Appeal No. M 2567 was continued for hearing until April 13, 1977. Through inadvertance this decision in Appeal No. M 2567 was entered on the records of the Board as a decision on both

appeals M 2567 and M 2573, whereas in Appeal No. M 2573 separate Findings of Fact, Conclusion of Law and Decision should have been issued. The following is, therefore, the official decision of the Board in Appeal No. M 2573.

FINDINGS OF FACT AND CONCLUSION OF LAW

1. The sole basis of the appeal is that the Chief, Business Licenses and Permits Division, of the District of Columbia Government, was without authority to deny the appellant an apartment house license for premises 1839 - 13th Street, N.W. on the basis of Housing Code violations resulting from a unit license survey conducted by the Housing Division of the District of Columbia. The appellant contends that the entry of the inspector to the individual units in the premises was illegal.

2. The Board finds that the inspection and Housing Notice was the result of a legal and proper annual license inspection. (See Holmes v. District of Columbia Board of Appeals and Review, 351 A 2d 518 (D.C. App. 1976)).

DECISION

By unanimous of the Hearing Committee, the action of the Department is SUSTAINED.

Robert T. Smith
Chairman, Hearing Committee

MAILED TO THE PARTIES April 11, 1979

APPENDIX C

Applicable Provisions of
District of Columbia Housing Regulations

THE HOUSING REGULATIONS
of the
DISTRICT OF COLUMBIA

ESTABLISHED AND AUTHORIZED BY
COMMISSIONERS' ORDER DATE AUGUST 11, 1955.

CHAPTER 1.

INTERPRETATION, DEFINITIONS AND GENERAL PROVISIONS

ARTICLE 130

NOTICE, AND APPEAL AND HEARING

Section 1301—Notice.

Whenever any duly designated agent of the District of Columbia determines that there are reasonable grounds to believe that there exists a violation of any provision of these regulations, he shall make a report to the Director of the Department of Licenses and Inspections of the District of Columbia, who shall, in his discretion, give notice of such alleged violation to the person or persons responsible therefor, as hereinafter provided. Such notice shall:

1301.1 Be in writing and be signed by the head of the Housing Division of the Department of Licenses and Inspections or his authorized agent.

1301.2 State the nature of the violation.

1301.3 Indicate the section or sections of these regulations which are being violated.

1301.4 Allow a reasonable time for the performance of any act such notice requires, and,

1301.5 Be served upon the person or persons responsible for correcting the violation described in the notice. Such notice shall be deemed to be properly served upon such person if a copy thereof is served upon him personally; or if left at his usual place of business or at his usual residence with a person over the age of 16 years then employed or resident therein; or if no such residence or place of business can be found in the District of Columbia by reasonable search, if left with any agent of the person to be notified, which agent has any authority or duty with reference to the premises to which such notice relates, or if left at the office of such agent, with any person employed therein; or if mailed postage prepaid to the last known address of the person to be notified and not returned by the Post Office authorities; or if no address be known or can by reasonable diligence be ascertained, or if any notice mailed as authorized by the preceding clause of this section be returned undelivered by the Post Office authorities, or if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained by a reasonable search, if published on three consecutive days in a daily newspaper published in the District of Columbia.

Sec. 1302—Appeal and Hearing.

1302.1 Any owner, licensee, or operator of any premises subject to the provisions of these regulations who is adversely affected by a determination made under the authority of these regulations may file an appeal in writing with the Board of Appeals and Review. Such appeal shall be filed within the period specified in the notice of violation for compliance therewith but in no case more than 30 days after the date of service of such notice: *Except,* where a request for a variance has been submitted to the Director or Deputy Director of Licenses and Inspections in accordance with the provisions of section 2702 of these regulations, such appeal shall be filed within 10 days after the date of service of the notice of the final determination on such request for variance.

1302.2 The Board of Appeals and Review shall provide the appellant with an opportunity for a hearing before its agent, a Hearing Examiner, and, if the appellant so requests, shall in addition permit him to present oral argument before the Board itself. The decision of the Board of Appeals and Review sustaining, modifying, or vacating notices issued under the authority of these regulations shall be final.

CHAPTER 2.

THE HOUSING CODE OF THE DISTRICT OF COLUMBIA

ARTICLE 210

PURPOSE, SCOPE, RIGHT OF ENTRY, PENALTY AND INDEPENDENCE OF SECTIONS

Section 2101—Purpose of Regulations.

The Commissioners of the District of Columbia hereby find and declare that there exist residential buildings and areas within said District which are slums or are otherwise blighted, and that there are, in addition, other such buildings and areas within said District which are deteriorating and are in danger of becoming slums or otherwise blighted unless action is taken to prevent their further deterioration and decline.

The Commissioners further find and declare that such unfortunate conditions are due, among other circumstances, to certain conditions affecting such residential buildings and such areas, among them being the following: dilapidation, inadequate maintenance, overcrowding, inadequate toilet facilities, inadequate bathing or washing facilities, inadequate heating, insufficient protection against fire hazards, inadequate lighting and ventilation, and other insanitary or unsafe conditions.

The Commissioners further find and declare that the aforesaid conditions, where they exist, and other conditions which contribute to or cause the deterioration of residential buildings and areas, are deleterious to the health, safety, welfare and morals of the community and its inhabitants.

The Commissioners, accordingly, promulgate these regulations for the purpose of preserving and promoting the public health, safety, welfare, and morals.

Sec. 2101—Scope.

The regulations contained in this Code shall apply to every premises or part thereof occupied, used, or held out for use as a place of abode for human beings.

Sec. 2103—Right of Entry.

Any duly designated agent of the District of Columbia is authorized, at all reasonable hours, lawfully to enter any premises for the purpose of enforcing these regulations.

Sec. 2104—Penalty.

Any person who fails to comply with any provision of this Code after expiration of the time for compliance established in accordance with this Code shall upon conviction be punished by a fine not to exceed $300., or by imprisonment for not to exceed 10 days, in lieu of or in addition to any fine, for such failure to comply. In the event of any failure so to comply, each and every day such violation continues shall constitute a separate offense, and the penalties prescribed above shall be applicable to each such separate offense, except that no further penalties shall be imposed for the period during which any appeal from a conviction of such offense is pending.

Sec. 2105—Independence of Sections.

Each section and every part of each section of this Code is hereby declared independent of every other section or part hereof, and the finding or holding of any section or part hereof to be void or ineffective for any cause shall not be deemed to affect any other section or part hereof.

CHAPTER 3.

GENERAL LICENSING REGULATIONS

ARTICLE 310

SCOPE, LICENSING, INSPECTION, RIGHT OF ENTRY, POSTING OF LICENSES, AND REGISTRATION OF MANAGERS

Section 3101—Scope.

This Chapter 3 of the Housing Regulations of the District of Columbia shall be applicable to housing businesses licensed under the authority contained in paragraph 28 of Section 7 of the Act approved July 1, 1902, as amended (Sec. 47-2328, D.C. Code, 1951 edition). *Provided,* That whenever any provision contained in this Chapter 3 shall conflict with or supercede a provision contained in Chapter 1 or 2, the provision contained in this Chapter shall be applicable.

Sec. 3102—Licensing.

"3102.1 No person shall operate a housing business in any premises in the District of Columbia without first having been issued a housing business license for such premises by the Superintendent of Licenses and Permits. No license to operate a housing business may be issued or retained if the Chief of Police determines that the applicant therefor or the licensee is not a person of good character. *Provided:* That an adverse report may be appealed to tne Board of Appeals and Review (C.O. No. 57-3191)

3102.2 No license to operate or conduct a particular housing business in premises not approved during the immediately preceding license period and currently zoned or excepted for such use in the District of Columbia shall be issued until th.. Director of the Department of

Licenses and Inspections has determined that the applicable provisions of these regulations have been observed. (C.O. No. 57-3191)

3102.3 The Superintendent of Licenses and Permits may upon application issue a renewal of a valid housing business license subject to subsequent determination that the applicable provisions of these regulations are being observed. Any licensee who fails to comply with the applicable provisions of these regulations after due notice of deficiencies may have his license suspended or revoked. (C.O. No. 57-3191)

Sec. 3103—Inspection.

The Director of Licenses and Inspections, the Fire Chief, the Director of Public Health, and the Director of Public Welfare shall inspect every licensed housing business and any premises for which a housing business license application has been filed with the District of Columbia, and the Chief of Police shall inspect every licensed housing business, as follows:

3103.1 The Director of Licenses and Inspections to determine conformity with the applicable provisions of the license laws and regulations, and to require that the building or part thereof comply with the applicable provisions of the laws and regulations enforced by him relating to buildings and appurtenances thereof.

3103.2 The Fire Chief to require that the premises comply with the applicable provisions of the laws and regulations enforced by him relating to fire prevention and control.

3103.3 The Director of Public Health to require that the premises comply with the applicable provisions of the laws and regulations enforced by him relating to public health.

3103.4 The Chief of Police to require that the operator comply with the applicable provisions of the laws and regulations enforced by him relating to the operation of housing businesses.

3103.5 The Director of Public Welfare to determine conformity with the provisions applicable to general administration and the welfare and comfort of convalescents in convalescent homes.

Sec. 3104—Right of Entry.

3104.1 The District of Columbia, both prior to the issuance of a housing business license and during the license period, shall have the right at all reasonable hours to enter and inspect the premises occupied or to be occupied by such housing business: *Provided,* That whenever an operator claims that any portion of such premises is under the exclusive control of a tenant, and he has so notified the Superintendent of Licenses and Permits, in accordance with the requirements of Commissioners' Order 301,260/10, dated September 14, 1948, as amended, the District will make no inspection of that portion of such premises so designated without first having obtained from the tenant or his agent permission to make the inspection required by the Act approved July 22, 1947, and these regulations: *Provided further,* That if any tenant of a housing business persists in refusing to authorize an inspection of that portion of such premises under his exclusive control, he shall be in violation of these regualtions.

3104.2 Refusal to permit the District of Columbia to inspect the premises occupied or to be occupied by such housing business shall be cause for withholding the issuance of a license therefor until such time as inspection is permitted, or for the revocation of any existing license.

Sec. 3106—Registration and Certification of Manager.

Where the manager or a housing business is other than the license, such manager shall within 30 days after promulgation of these regulations, register his or her full name and address, and the location of such housing business of which he or she is manager, with the License Officer for the police precinct in which said housing business is located, and such manager of a housing business that is first opened for business after promulgation of these regulations shall register in like manner within five (5) business days after the opening of said business. In the event the position of manager is created for an existing housing business or a change in management of an existing housing business is made, such new manager shall register with the License Officer of the police precinct as indicated above, within five (5) business days thereafter. No person shall manage a housing business if the Chief of Police determines that such person is not of good character: *Provided,* That an adverse report on such person may be appealed to the Board of Appeals and Review.

ARTICLE 320

OPERATION OF HOUSING BUSINESSES

Section 3201—Commercial Occupancies.

No person shall rent or offer for rent any habitation or operate any housing business in any building or part thereof in which there is another business, trade or commercial activity from which noxious gases, fumes, mists, vapors, dusts, offensive odors, or excessive noise arise or are generated.

Sec. 3202—Mattresses.

When furnished by the operator, mattresses shall not be made of moss, sea grass, excelsior, husks, or shoddy.

Sec. 3202—Locks and Keys.

The owner or operator shall provide to each tenant, when the tenant first enters into possession of a habitation, an adequate lock and key for each door used an an entrance to or egress from such habitation, and shall keep each such lock in good repair. Such lock shall be capable of being locked from inside and outside the said habitation.

Sec. 3204—Stairs and Hallways.

The artificial illumination of stairs and hallways shall be arranged and maintained to provide illumination from sunset to sunrise and at other times when daylight does not provide illumination of an intensity of at least six foot candles at the tread and floor level.

Sec. 3205—Receptacles for Ashes, Garbage, and Refuse.

The tenant of each dwelling unit in multiple dwellings shall provide as needed for his own use sufficient, lawful and separate receptacles for the storage of ashes, garbage and refuse in his own unit. All garbage, refuse and ashes of each unit shall be placed by the occupant in such receptables and transferred by him to the designated place of common storage on the premises unless such collection and transfer is provided by the operator.

Sec. 3206—Combustible Refuse and Debris.

3206.1 It shall be the duty of the operator to maintain the premises, excepting those portions under the exclusive control of the tenant or tenants thereof, free from combustible refuse and debris, accumulated grease or oil spillage.

3206.2 The operator or any tenant shall not permit the accumulation of rags, waste paper, broken furniture or any combustible junk in any portions of the premises under his respective control.

Sec. 3207—Heating and Cooking Appliances.

3207.1 Heating and cooking appliances shall be installed and maintained in accordance with the fire prevention and protection requirements of the applicable D.C. laws and regulations. (For information see Building Code, Plumbing Code, Electrical Code, Gas Fitting Regulations, Smoke and Boiler Regulations, and Police Regulations.)

3207.2 The operator shall be responsible for the fire-safe installation and maintenance of all heating and cooking appliances furnished by him. Where appliances are furnished by the tenant, the tenant shall be responsible for meeting the District laws and regulations on fire protection and prevention.

3207.3 Oil heaters shall be flue-connected and installed in accordance with Section 5 of Article XXXVII of the D.C. Police Regulations.

3207.4 Ashes shall not be placed in combustible receptacles, nor on or against conbustible materials.

3207.5 The operator shall maintain each incinerator, shaft, spark arrester and hopper door in a fire-safe condition.

3207.6 It shall be the duty of the operator to keep each gas meter room free from combustible material, and maintain the required ventilation for such room.

3207.7 All heating and cooking facilities and appliances, flues, chimneys and parts thereof shall be maintained in a fire-safe condition.

Sec. 3208—Egress Facilities.

3208.1 It shall be the duty of the operator to keep fire escapes, stairways, and other egress facilities in a good state of repair and free from obstruction.

3208.2 The operator shall keep exterior stairways and fire escapes painted.

3208.3 The operator shall maintain all fire doors for vertical and horizontal communications in an openable condition in accordance with their required function.

3208.4 The operator shall keep all public and exit corridors free of obstructions.

Sec. 3209—Exit and Emergency Lights and Directional Signs.

3209.1 It shall be the duty of the operator to maintain in an operable condition all emergency and exit lights.

3209.2 The operator shall maintain lighted exit and emergency lights from sunset to sunrise, and at other times when conditions warrant.

3209.3 The operator shall maintain all exit directional signs.

Sec. 3210—Fire Alarm Systems.

3210.1 The operator shall maintain in an operable condition all required fire alarm systems.

2310.2 The operator shall provide and maintain informative signs concerng the operation of the local fire alarm system at each striking station.

3210.3 Each operator shall post and maintain signs referring to fires in accordance with Article XXXVII (37), D.C. Police Regulations.

Sec. 3211—Fire Extinguishing Equipment.

The operator shall maintain all required fire extinguishing equipment in an operable condition.

Sec. 3212—Fireproofing.

The operator shall maintain all required fireproofing and all fire protective construction in a good state of repair.

ARTICLE 330

PLACARDING, REVOCATION OF LICENSES, AND PENALTY

Section 3301—Placarding.

When any premises occupied by a housing business or part thereof does not comply with these regulations, or a violation of these regulations is permitted to continue therein, the Director of Licenses and Inspections, after reasonable notice to the operator, in his discretion may place upon the entrance to that part of the premises found to be in violation, a placard declaring such premises or part thereof to be unfit for human habitation. Such placard upon being posted may be removed only by the Director of Licenses and Inspections and shall not be removed by an unauthorized person. In the case of apartments and tenements only, thirty (30) days after the date of such placarding, it shall be unlawful for any operator to permit the occupancy of or for any person to occupy such apartment or tenement or part thereof until such placard is removed by the Director of Licenses and Inspections.

Sec. 3302—Revocation of Licenses.

The violation of any of the applicable provisions of these regulations or the failure to comply with any of the applicable requirements hereof shall be cause for the institution of proceedings as provided for in the License Act.

Sec. 3303—Penalty.

Any person who fails to comply with any provision of these regulations shall upon conviction be punished by a fine not to exceed $300, or imprisonment not to exceed 90 days for each such failure to comply. In the event of any failure to comply with these regulations, each and every day of such failure shall constitute a separate offense, and the penalties prescribed above shall be applicable to each such separate offense.